

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

TREATMENT OF RATE INCENTIVES AND
DE MINIMIS RATE INCREASES
FOR PRICE CAP PURPOSES

Docket No. RM2014-3

REPLY COMMENTS OF THE UNITED STATES POSTAL SERVICE
(April 17, 2014)

The United States Postal Service hereby submits its reply to the various comments filed on March 18, 2014, in response to the proposed price cap rules for the treatment of rate incentives and de minimis rate increases under 39 U.S.C. § 3622(d) and 39 C.F.R. part 3010.1 (collectively “Commenters”).¹

At the outset it is important to note that all commenters appear to agree on the need for clarifying revisions to: 1) the definition of a “Rate of General Applicability” under proposed rule 3010.1(g);² and 2) the need to limit the applicability of proposed rule 3010.23(d)(4) to situations where a rate cell is deleted because of a product transfer.³ However, in addition to these areas of agreement, the Postal Service has significant reservations regarding some of the Commenters’ suggested revisions.⁴ Put simply, the

¹ Docket No. RM2014-3, Comments of the Association for Postal Commerce (March 18, 2014) [hereafter “PostCom Comments”]; Joint Comments of the National Association of Presort Mailers, The Major Mailers Association, and the Association for Mail Electronic Enhancement (March 18, 2014) [hereafter “Joint Comments”]; Comments of the National Postal Policy Council (March 18, 2014) [hereafter “NPPC Comments”]; Comments of Pitney Bowes, Inc. (March 18, 2014).

² NPPC Comments, *supra* note 1, at 3-4; Joint Comments, *supra* note 1, at 3-4; PostCom Comments, *supra* note 1, at 3-6.

³ NPPC Comments, *supra* note 1, at 6; Joint Comments, *supra* note 1, at 2-3; Comments of Pitney Bowes, Inc., *supra* note 1, at 2-3.

⁴ If the Postal Service has failed to address a particular party’s comment in any section below, it should not indicate that the Postal Service supports those views. The Postal Service submits that its position on

proposals discussed below seek to place unnecessary and unreasonable restrictions on how/when the Postal Service may use pricing authority that is generated from rate incentives. The Postal Service finds no sound basis for applying such restrictions and believes that, in some cases, it would be unlawful to do so.

I. Deferred Calculation of Unused Rate Adjustment Authority from Rate Incentives

Under proposed rule 3010.23(a)(1)(iii), the Postal Service is given the option to either: 1) claim any price cap authority from a rate incentive during a Type 1-C case; or 2) wait until a subsequent rate adjustment proceeding to claim cap space for a rate incentive.⁵ Certain Commenters urge the Commission to revise the proposed rule to require the Postal Service to decide whether it will claim price cap authority for a rate incentive at the time the adjustment is first proposed.⁶ These Commenters claim that forcing the Postal Service to make its election when the rate incentive is first proposed will give mailers greater predictability regarding the price cap, because they would know from the outset whether the rate incentive could be recouped through future rate increases.⁷ The Postal Service disagrees with the Commenters' proposals and believes that they would unreasonably restrict the Postal Service's pricing flexibility and needlessly encumber its business planning activities.

Though Commenters suggest that mailers would have greater predictability regarding the price cap by forcing the Postal Service to choose whether to receive

all of the salient issues facing the Commission in this docket has been fully presented in the Postal Service's initial comments, filed on March 18, 2014, and in these reply comments.

⁵ Docket No. RM2014-3, Order No. 1879: Notice of Proposed Rulemaking on the Treatment of Rate Incentives and De Minimis Rate Increases for Price Cap Purposes, Attachment – Proposed Price Cap Rule Changes, at 10 (November 18, 2013) [*hereafter* "Order No. 1879"].

⁶ NPPC Comments, *supra* note 1, at 5; Joint Comments, *supra* note 1, at 3.

⁷ *Id.*

pricing authority when a rate incentive is first proposed, the Commenters do little to explain how, if at all, such certainty would influence mailers' willingness to participate in (and therefore benefit from) rate incentives. In that regard, the Postal Service has not observed any linkage between its decisions on whether to seek price cap authority for rate incentives, and mailers' willingness to participate in those incentives.⁸

Moreover, the practical realities surrounding price cap calculations sometimes make it difficult for the Postal Service to determine whether it should request cap space for a newly introduced rate incentive. For example, when initially offering a rate incentive, the first year price cap calculation is limited to historical billing determinants,⁹ which may be zero, or very low, in many instances. With such limited data, the Postal Service may not be in a position to know whether it should request price cap authority for the rate incentive. However, in subsequent years, the billing determinants would reflect actual experience during the promotion, providing a better estimate of the price cap impact and how the incentive influenced mailer behavior. Thus, the current flexibility provided by the Commission's proposed rules allow the Postal Service to make informed business decisions on when it should, or should not, request pricing authority for rate incentives. Strikingly, Commenters' proposal would provide a perverse incentive for the Postal Service to always request price cap authority for newly introduced rate incentives, since it would not be able to do so later.

Given the above discussion, and without evidence suggesting that mailers will realize any benefit from forcing the Postal Service to immediately decide whether to

⁸ Significantly, Commenters' arguments concerning predictability are largely blunted by proposed rule 3010.23(d). Under that proposed rule, if the Postal Service were to request price cap authority for an incentive in subsequent years, it would not be able to "surprise" mailers by suddenly seeking cap space from prior periods where it chose to forgo cap space.

⁹ See Proposed Rule 3010.23(d)(3).

seek cap space for rate incentives, the Commission should decline to amend its current proposal under rule 3010.23(a)(1)(iii).

II. Application of Unused Rate Adjustment Authority from Rate Incentives to Products Eligible for the Incentive Rates.

On page 7 of its comments, the Association for Postal Commerce (“PostCom”) argues that the Commission should amend its proposed rules to clarify that “any cap authority created [by a mid-year rate incentive] should be applied only to those products which were eligible for the promotional or incentive rates.”¹⁰ PostCom argues that such a rule is necessary to protect mailers who were not eligible to participate in the promotion.¹¹ PostCom goes on to state that this position was recognized by the Commission in Order No 1541.¹² The Postal Service strongly opposes PostCom’s proposal and believes that it ultimately runs counter to Commission precedent and the basic structure of the price cap.

39 U.S.C. § 3622(d)(2)(A) makes clear that the annual price cap limitation is applied to classes of mail, as opposed to individual products. This fundamental tenant of the price cap is further codified in 39 C.F.R. § 3010.20, which states that “the appropriate annual limitation shall be applied to a measure of the rates paid by mail sent in each class for which rate adjustments are to be made...” Thus, unless otherwise authorized by Title 39, the Commission has never placed general limitations on how the Postal Service may apply its price cap authority to particular products within a class.

¹⁰ PostCom Comments, *supra* note 1, at 7.

¹¹ *Id.*

¹² *Id.*

Simply put, the Postal Service sees no reason why price cap authority generated from a rate incentive should be treated any differently.

Even when price cap authority has been generated from significant price reductions for particular products within a class, the Commission has not restricted the use of that pricing authority to only future price adjustments for those particular products. As the Postal Service mentioned in its initial comments, in Docket No. R2013-7 the Commission approved the addition of price cap authority for the Special Services Class when the Postal Service began including free insurance with certain Priority Mail packages.¹³ Though this cap authority was generated as a result of reducing insurance rates, the Postal Service was not prevented from using this pricing authority for future price increases on any product within the Special Services Class. Similarly, in Docket No. R2012-3 the Commission approved the creation of price cap authority for the Special Services Class when the Postal Service reduced rates for Confirm and Delivery Confirmation services.¹⁴ Again, though this price cap authority was generated as a result of price reductions from two individual products, the Postal Service was not prevented from later using such authority for future price increases on any product within the affected class.

Finally, PostCom's assertion that the Commission recognized the merits of its proposal in Order No. 1541 is misleading. While the Commission did state that "the Postal Service's price cap treatment of promotions is permissible so long as volumes

¹³ Docket No. R2013-7, Order No 1756: Order Granting Market Dominant Price Adjustment for Insurance, at 3, 8 (June 21, 2013).

¹⁴ Docket No. R2012-3, Order No. 987: Order on Price Adjustments for Market Dominant Products and Related Mail Classification Changes, at 44-47 (November 22, 2011).

are properly ascribed to the appropriate products,”¹⁵ this statement does not relate to how the Postal Service may use price cap authority generated from rate incentives. Rather, in order 1541, the Commission was merely opining on how rate incentive volumes should be treated in the Postal Service’s calculation of the price change for the class of mail.¹⁶ Accordingly, Order 1541 in no way limits the Postal Service’s business judgment when lawfully applying its price cap authority to specific products within a class of mail.

Given the above, the Postal Service reiterates its request that the Commission decline to adopt PostCom’s proposal to limit the use of price cap authority generated from rate incentives. Simply put, the adoption of such a proposal would not only be unlawful under Title 39, but would also run counter to Commission precedent that has historically provided the Postal Service with the freedom to determine how its pricing authority should be applied to individual products within a class.

III. Inclusion of a True-Up Provision for Price Cap Authority Generates from Rate Incentives.

Finally, on pages 7-9 of PostCom’s comments, it requests that the Commission require the Postal Service to reconcile (“True-Up”) the volume sent at promotional rates with the pricing authority it claims in its next scheduled price adjustment.¹⁷ In other words, PostCom seeks to add a provision that would ensure that the price adjustment

¹⁵ Docket No. R2013-1, Order No. 1541: Order on Price Adjustments for Market Dominant Products and Related Mail Classification Changes, at 18 (November 16, 2012).

¹⁶ *Id.* at 17-18.

¹⁷ PostCom Comments, *supra* note 1, at 7-9.

authority generated from a rate incentive would only reflect the actual volumes that traveled at the discounted rates.¹⁸ The Postal Service opposes this proposal.¹⁹

As PostCom and other Commenters have done throughout this rulemaking, this proposed change again seeks to treat price cap authority generated from rate incentives differently from any other pricing authority available to the Postal Service. If the aim of the True-Up provision is to ensure that the Postal Service's price adjustment authority accurately reflects volumes sent under specific rates, then why is a similar True-Up provision not needed for all other rate adjustments. For example, since the Postal Service uses historic billing determinants to calculate its annual price adjustments, less volume than was originally projected sometimes travels at the new rates. Under such circumstances, it would make sense for the Postal Service to reconcile the actual volumes sent with the price adjustment authority it claimed in the next price adjustment. This would ensure that the Postal Service is not denied pricing authority that it would otherwise be entitled to. Unfortunately, such a mechanism does not exist, nor would mailers be likely to support such a provision, since it could result in additional pricing authority for the Postal Service (especially during periods of declining volumes).

In this regard, it is noteworthy that PostCom's True-Up proposal only focuses on when the actual volumes sent under promotional rates fall short of the projections made during the prior price adjustment.²⁰ However, a complete True-Up provision would also need to account for instances where actual volumes exceeded the projections, entitling

¹⁸ *Id.* at 8.

¹⁹ PostCom's True-Up proposal is also striking, because it appears to run counter to the very "certainty" and "predictability" that it and other mailers advocate for in their comments. Indeed, adding a True-Up provision would only add additional uncertainty to the price cap calculations for rate incentives; causing mailers to wait up to a year to find out how much cap space the Postal Service would earn from a particular promotion.

²⁰ *Id.*

the Postal Service to additional pricing authority. Without such parity, PostCom's proposal is patently self-serving.

In brief, given that the Postal Service must use historic billing determinants when calculating the price cap impact of promotions (just as it would for calculating the price cap impact of any other rate adjustment) the Postal Service sees no reason why a true-up provision should be applied exclusively to price cap authority generated from promotions. As past practice indicates, the Postal Service and the Commission have successfully included price cap authority from rate incentives in the most recent price cases without the proposed provision.

IV. Conclusion

For the forgoing reasons the Postal Service reiterates its request that the Commission reject the above discussed proposals made by PostCom and other Commenters.

Respectfully submitted,

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